

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

Rex Realty, Co.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C99-103 MJM
	)	
City of Cedar Rapids,	)	
	)	<b>ORDER</b>
Defendant.	)	
	)	

In this proceeding, the court is asked to rule upon the constitutionality of Iowa Code Chapter 6B (1999). The issue before the court is whether the Defendant City of Cedar Rapids (hereinafter City), in exercising its power of eminent domain, was required to give Plaintiff Rex Realty (hereinafter Rex) notice before condemning Rex's property. The case was submitted on the facts alone and the court heard oral arguments<sup>1</sup>. The court holds that the City was not required to give the requested notice and the statute under which the City acted provided sufficient constitutional

---

<sup>1</sup>Pursuant to Local Rule 24.1, Rex Realty properly notified the Iowa Attorney General of the complaint contesting the constitutionality of Iowa's eminent domain statute. (Doc. No. 3). This court, in accordance with 28 U.S.C. § 2403, certified the issue to the Iowa Attorney General. (Doc. No. 8). The Attorney General exercised its right to intervene and filed a brief in the support of the constitutionality of Iowa Code Chapter 6B. (Doc. Nos. 18-19). The Attorney General waived oral argument. (Doc. No. 27).

protection. Before setting forth the reasoning of the court, the stipulated facts must be reviewed.

### **FACTS**

Rex owned real estate located in Cedar Rapids at 5625 6th Street, S.W. On June 2, 1999, the City passed Resolution No. 1098-6-99 seeking to condemn a portion of Rex's property. The City filed an Application for Condemnation with Judge August F. Honsell of the Sixth Judicial District of the Iowa District Court on June 10, 1999. Judge Honsell signed the application and Rex was served with a Notice of Condemnation. The Condemnation provided in part:

1. "You are hereby notified that the Incorporated City of Cedar Rapids, Iowa desires condemnation" of a portion of Rex's property.
2. "That condemnation is sought for the purposes of additional street right-of-way for Fourth Street Court S.W."
3. "A Commission has been appointed as provided for by law for the purpose of appraising the damages which will be caused by this condemnation."
4. The Commissioners would meet at the Linn County Correctional Center on the 21<sup>st</sup> day of July, 1999, at 9:30 a.m. to view the premises and proceed to appraise the damages, at which time "you may appear before the Commissioners if you care to do so."

On July 21, 1999, the Compensation Commission held the hearing at which Rex's counsel appeared. The Compensation Commission determined the damages sustained by Rex totaled \$38,000.

The following facts surrounding the proposed condemnation are agreed upon by both parties and constitute the entire factual and evidentiary record for the remaining issue in this litigation. Representatives of Rex Realty communicated at various times with the Engineering Department of the City of Cedar Rapids before the Compensation Commission hearing, including numerous discussions of the project, the City's intentions, and Rex's rights concerning compensation. Rex Realty was informed by the Engineering Department several months prior to the consideration and adoption by the Cedar Rapids City Council of Resolution 1098-6-99 that the City would exercise its right of eminent domain if mutually agreeable compensation could not be agreed to. Rex Realty was represented by counsel at all relevant times. Rex Realty did not request a formal hearing before the City Council to raise the issue of the 'public purpose' of the condemnation, nor did Rex commence any legal action in state or federal court to attempt to stop the condemnation from going forward. The parties agree that stipulating to this fact does not indicate or imply that Rex knew if or when the condemnation resolution would be passed or the City would have held, or would have been required to hold, a hearing on the issue of 'public purpose' had Rex requested one. Rex Realty was not provided with notice of any pre-condemnation hearing at which Rex Realty could challenge the public purpose aspect of the condemnation. The parties agree that stipulating to this fact does not indicate or imply that the City was required to provide Rex with notice of a pre-condemnation

hearing at which Rex could challenge the public purpose aspect of the condemnation.

### **ANALYSIS**

Rex contends due process required the City to provide Rex an opportunity to object to the condemnation of its property on the grounds the City's actions were not for a public purpose. Rex has canvassed the case authority on due process and woven the common thread of notice and opportunity to be heard abundantly throughout its argument. However, the court does not find its arguments persuasive, nor does it find authority to support Rex's position.

A review of the power of eminent domain describes its requirements and boundaries. "Eminent domain is the power of a governmental entity to take private property for a public use without the owner's consent." *Acco Unlimited Corp. v. City of Johnston*, 611 N.W.2d 506, 510 (Iowa 2000). In exercising its power of eminent domain, the City must follow a constitutional mandate: "[I]t is well settled that a sovereign vested with the power of eminent domain may exercise that power consistent with the constitution without providing prior notice, hearing or compensation so long as there exists an adequate mechanism for obtaining compensation." *Collier v. City of Springdale*, 733 F.3d 1311, 1314 (8th Cir. 1984) (citations omitted). The Compensation Committee, provided for by statute, met this requirement and determined Rex should be compensated \$38,000 for the taking of its

property by the City.

Rex asserts a constitutional right to notice and an opportunity to be heard on whether the taking was for a public purpose. Such a right is not contemplated by due process or the case authority defining what process is due. The authority is clear on the mechanics of a public taking: “Before a city may invoke its power of eminent domain, Iowa law imposes two requirements: the property must be taken for a public use, and the taking must be reasonable and necessary.” *Acco Unlimited Corp.*, 611 N.W.2d at 510. Due process does not require a pre-deprivation hearing to ascertain whether the taking is for a public purpose. See *Collier*, 733 F.3d at 1314 (“Thus, it is well settled that a sovereign vested with the power of eminent domain may exercise that power consistent with the constitution without providing prior notice, hearing or compensation so long as there exists an adequate mechanism for obtaining compensation.”). The law presupposes such a purpose in the governing entity’s actions. See *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 244 (1984) (“[I]f a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use.”). The City’s actions clearly were for a public purpose. While Rex contends the City took its property for a private purpose—“a second driveway to a single parcel of private property”—the record indicates the proposed condemnation

was sought for additional street right-of-way for Fourth Street Court S.W. This particular taking would meet even more exacting requirements for a public use determination than what is required under existing case authority. See *Hawaii Housing Authority*, 467 U.S. at 244.

This issue is similar to that addressed by this court in *Crompton Corp. v. City of Dubuque*, No. C01-1015-MJM, and therefore warrants repeating the case law relied upon, and conclusions this court reached, in that litigation. In *Crompton*, the plaintiff challenged the constitutionality of the notice provisions of the Iowa Urban Renewal Statute. In finding the statute constitutional, this court was particularly persuaded by *Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668 (1923), wherein the United States Supreme Court examined a municipality's right to execute legislative pronouncements. In *Joslin*, the Court was faced with a situation in which the plaintiff sought to enjoin the defendant city, which was acting pursuant to authority derived from a state statute, from taking possession of, or interfering with, its property. *Id.* at 669. The Court stated:

[T]he validity of the act is challenged as denying due process of law, on the ground that the question of the necessity for taking the property has not been determined by the Legislature itself, but is relegated to the city to decide ex parte, without appeal or opportunity for hearing and decision by an impartial tribunal. That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. Neither is it any longer open to question in this court that the Legislature may confer upon a

municipality the authority to determine such necessity for itself.

The question is purely political, *does not require a hearing*, and is not the subject of judicial inquiry. The Legislature here, while investing the city with the authority to determine it, in each instance, has carefully circumscribed the power by limiting its exercise within a definitely restricted area. The city may take less than this area, but cannot take more.

*Id.* at 678 (emphasis added) (citations omitted). To satisfy due process, the City does not need to hold a hearing regarding the purpose of the taking. See *Collier*, 733 F.3d at 1314.

### **CONCLUSION**

The court is not persuaded by Rex's argument that the statute is constitutionally deficient. Rex is not due notice and an opportunity to be heard on the City's determination of whether the taking is for a public purpose. Due process, in this circumstance, required notice and opportunity to be heard on the issue of just compensation. The required due process was satisfied with the June 10, 1999, notice of condemnation.

### **ORDER**

For the reasons mentioned herein, the court finds the notice provisions of Iowa Code Chapter 6B satisfy constitutional due process requirements. Accordingly, the court enters judgment in favor of the City of Cedar Rapids and against Rex Realty on

its constitutional challenge to Iowa Code Chapter 6B.

Done and so ordered this 29th day of January, 2002.

---

Michael J. Melloy,  
United States District Judge for the  
Northern District of Iowa